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Jennifer Marson
Western Michigan University

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The History of Punishment: What Works for State Crime?

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By Jennifer Marson
 Department of Sociology
 jennifer.j.marson@wmich.edu

Graeme Newman (1985) perhaps said it best when he stated, “The only aspect of punishment that needs justification is its distribution” (p.4). Newman was referencing the long history of punishment utilized and implemented throughout recorded history, from “punishment” on man from the physical environment, perceived punishments from religious gods, to punishment imposed by society. Punishment imposed by societies has a long (and often times sordid) past from banishment and fines in ancient Greece, torturous physical punishment during the Inquisition, the implementation of the death penalty in 17th century England, rehabilitative practices utilized by Britain and the United States into the 20th century, and the extreme occurrence of incarceration currently implemented in the United States. These examples are but a brief glimpse into the history of punishment and suggest that punishment, in some form, has always existed.

Justifications for Punishment

The punishment of wrongdoings is typically categorized in the following four justifications: retribution, deterrence, rehabilitation and incapacitation (societal protection). There is also discussion and promotion of additional criminological tactics such as restorative justice and therapeutic jurisprudence as new and innovative responses to traditional punishment responses. This paper will outline the logical and historical practices of the above approaches to punishment. Additionally, a discussion of state crime will be provided as well as an analysis of which punishment response is most fitting in instances of state crime.

The question of what exactly determines punishment, or what punishment is, is generally agreed upon by the following technical definitions. Bean (1981) states that punishment, through the lens of a sanction that is imposed upon an individual for a criminal offense, is made up of five specific elements:

- 1) The sanction must be perceived as unpleasant to the victim
- 2) The sanction must only be for an actual or alleged offense.
- 3) The sanction must be of an offender, actual or supposed
- 4) The sanction must be handed out by personal agencies and the sanction must not be a natural cause/consequence of the criminal action.
- 5) The sanction must be carried out by the “state.” In other words, the authority/institution that the offense is committed against shall be the one to carry out the sanction. (p.5-6).

Newman (2008), when building on the definition provided by H. L. A. Hart, defines punishment as:

- 1) Punishment must involve pain or unpleasant consequences.
- 2) Punishment must be a sanction for an offense against a specific rule or law.
- 3) Punishment must be executed upon the specific offender who has allegedly or actually committed the crime.
- 4) It must be administered intentionally by someone other than the offender.

- 5) “It must be imposed and administered by an authority constituted by a legal system against which the offense is committed” (p.7-11).

What is located in the above definitions is a synthesis of the idea the punishment must be considered unpleasant for the offender, must be a direct action taken upon the offender for an actual or alleged crime, and it must be imposed and administered by an authority within in a legal system. While the above definitions of punishment may be somewhat agreed upon, the reasoning as to *why* offenders should be punished is littered with philosophical and criminological debate. The four traditional explanations provided include retribution, deterrence, rehabilitation and incapacitation.

Retribution

Retribution is often considered to be the oldest form of punishment, and is often viewed as society’s “revenge” for a moral wrongdoing by an individual. In other words, punishment is justified simply because it is deserved. If an individual commits a crime, they deserved to be punished. Kant and Hegel, two avid proponents of the retributive approach, each provided different justifications for this punishment response. Hegel believed that the state had the right to punish using retributive measures, as it was essentially more important and powerful than the individuals that made up the state, and demanded a sacrifice when crimes were committed against it (Newman, 1985). Foucault (1977), states “Besides its immediate victim, the crime attacks the sovereign: it attacks him personally, since the law represents the will of the sovereign; it attacks him physically, since the force of the law is the force of the prince” (p. 47). Kant, however, believed that retributive punishment was a necessity to restore the balance that the crime unhinged between the state (governing body), the people, and the criminal. For Kant, it was not about punishment being a debt owed to the state, but a debt owed to the people, and the state was simply an actor charged with protecting its people. Foucault (1977) suggests that this form of punishment was most utilized prior to the 18th century when torture and executions were public and common. The purpose of punishment was retributive and punishment was focused primarily on the physical body.

Retribution approaches also suggest that there are agreed upon rules within society, and those who violate those rules must be punished to uphold those values and rules. Banks (2013) states, “Once society has decided upon a set of legal rules, the retributivist sees those rules as representing and reflecting the moral order” (p. 109). Newman states that for the retributivist, “punishment restores an equilibrium that was upset by the crime” (p. 192). Durkheim suggested that punishing criminals who committed moral wrongdoings was a way in which society could further create and maintain moral awareness and he approved of such “mechanisms of punishment reinforcing the moral indignation, the collective sentiment, and thus the morality of society” (Newman, 2008, p. 274).

Retribution is further illuminated by its proposal that punishment should be in proportion to the crime. It is here that retributionists’ provide a separation from retribution and vengeance. Critiques of the retribution approach often suggest that it is simply glorified vengeance. However, Noziak (2001) suggest that whereas vengeance may happen to an innocent person, retribution is carried out by legitimate authorities who have identified an actual or presumed offender. Furthermore, legal retribution mechanisms outline strict procedural practice which implements limits on crime (Banks, 2013).

Perhaps the clearest justification for retribution practice comes from the *lex talionis* derived from biblical times (Banks, 2013), and the basic principle “that punishment should inflict the same on the offender as the offender has inflicted on his or her victim” (p. 110). Specific biblical passages that are used to support this claim include: “but if there is serious injury, you are to take life for life, eye for eye, tooth for tooth, hand for hand, foot for foot,

burn for burn, wound for wound, bruise for bruise (NIV; Exodus 21: 23-25).” In the book of Leviticus 24:17, Moses states “If anyone takes the life of a human being, he must be put to death” and in Deuteronomy 19:21 “Show no pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot.” Retributionists often cite these passages as divine support for the idea of retribution style punishment and suggest it is morally justifiable. However, the biblical passages that promote reconciliation, forgiveness and rebuke retribution are often ignored (Ephesians 4:32; Hebrews 12:14; Luke 6: 27-42; Matthew 18:33).

The idea of censure is also principally important in the understanding of retribution. Andrew von Hirsch, a support of the “just deserts” model, suggests that “censure is simply holding someone accountable for his or her conduct and involves conveying the message to the perpetrator that he or she has willfully injured someone and faces the disapproval of society for that reason” (Banks, 2013, p. 110). H. Morris (1994) suggests that the main benefit of this type of punishment is the effect that it will have on the offender and suggests that punishment for their specific offense will reflect the communal values they have broken and they will eventually determine to act according to those values. Both Hirsch and Morris contend that there is a deterrent effect enveloped in retributive punishment.

Until the 1970s, the idea of retribution as a justification for punishment was considered to be vengeful. In the 1980s, a new form of retribution theory occurred and was known as “just deserts” (Banks, 2013). Just deserts model suggested that not only did a criminal need to be punished because his criminal act was wrong, but that this punishment needed to be proportional to the crime. It is here that modern day retributionists separated retributive punishment from vengeance. Punishment should be proportional to the crime, and should not be considered vengeful as there are limits to the punishment and procedural standards to be followed. Essentially, a scale of punishments is allocated and the most severe punishments are reserved for the most severe offenses, frequently accepted as tariff sentencing. Banks (2013) elaborates, “In this method of punishing, the offender’s potential to commit future offenses does not come into consideration, but his or her previous convictions are taken into account because most proponents of just deserts support reductions in sentence for first offenders” (p.113). When quoting Hudson (1996), Banks (2013) suggests that one of the fundamental issues with just deserts theory is doesn’t provide a clear outline of a “properly commensurate sentence.” Furthermore, the just deserts model of retribution fails to take into account any social issues, such as disadvantage or discrimination that may increase the likelihood of an individual committing a crime.

Deterrence

Deterrence theory is considered more of an early modern approach to crime in which punishment is viewed as a social disruption which society must control. This perspective maintains that people act rationally and are self-interested, thus deterrence works because the punishment is more painful than the crime is pleasurable. Beccaria and Bentham are often credited with the first analytical discussion of deterrence, clearly outlined in their utilitarian approach to punishment. At the crux of Beccaria’s argument is his insistency on the inhumane nature of the response to crime during the time of his writing (1760s) and that punishment needed to have a preventative, not a retributive, function. More specifically, for Utilitarian’s such as Bentham and Beccaria, the only purpose of punishment was to prevent or deter future crime.

Whereas retribution theorists focus on past events, utilitarian’s and deterrence theorists’ focused on future issues. If the punishment does not prevent future crime, than it simply adds to the suffering of a society. Punishment is not so much about if an individual deserves to be punished, but if punishment will have a deterrent effect both on the individual and society as a whole. Regardless of the form of punishment, the primary focus is to deter individuals from

committing a criminal act in the future. We find evidence of this in the United States' "get tough on crime" approach, specifically with the "3 strikes" drug rule.

Rehabilitation

Both retribution and deterrence are focused primarily with the crime and then the punishment. The rehabilitation reasoning for punishment approaches punishment from a different angle. The rehabilitative model is a modern strategy of responding to crime which is often linked to the emergence of the social sciences. This response to crime suggests that crimes are committed as a result of individual or social problems and the best response to crime is to eliminate such personal and social problems. The rehabilitative response looks specifically into the criminals social past, which is absent in both retributive and deterrence philosophies. The attempt to "rehabilitate" is often done by treatment that is specifically geared towards the offender.

Proponents of the rehabilitative model, in contrast to both retribution and deterrence, suggest that punishment should be specifically designed for the offender, not the offense (Banks, 2013). The notion of rehabilitation encompasses a deterrent effect, as it is suspected that with rehabilitation the offender will be less likely to commit crimes in the future. Rehabilitation models tend to include programs specifically designed towards the problems that an offender personally faces. For example, required drug treatment programs and high school and college completion courses as part of probation or offered during incarceration are examples of rehabilitative attempts.

Garland (2002) notes that the rehabilitative model was widely used in the United States until the 1970s, when it was determined that rehabilitation didn't work in controlling or preventing crime. This was a result of a variety of factors and Martinson's (1974) article (which may have been misinterpreted) suggested that no treatment program had been shown to reduce or prevent recidivism in offending.

Incapacitation

Incapacitation, or societal protection, is a modern response to crime that is often much easier to implement than rehabilitative models. Incapacitation is the notion that the primary goal of punishment is incapacitate the offender, which is done to protect society as a whole from any future offenses that a criminal may commit. Incapacitation often results in incarceration, which may include some levels of rehabilitation, but this is not the primary purpose. The primary purpose is to protect society from the potential danger that the criminal may impose. Foucault (1977) suggests that incapacitation was essentially all about the power that the state could exert over its citizens and reflected the change from punishment directly inflicted upon the body, to punishment directed on the mind. Primarily, this power is reflected in the states' ability to constantly monitor those who are incarcerated. However, he suggested that "imprisonment not as penalty, but as holding the person and their body for security" (p. 118). Furthermore, Foucault notes the use of the carceral as an attempt to not just monitor, but also as an avenue with which to "reform" prisoners.

There is support for incapacitation within the utilitarian theory, as the removal of the offender from society prevents the criminal from harming society (Banks, 2013). This justification for incapacitation as a form of punishment is criticized as it rests on the idea that a criminal *might* commit a future offense and the morality associated with that claim. Incapacitation not only considers the current crime committed, but the likelihood that future infractions may occur.

Incapacitation as means of justification for punishment runs rampant within the United States. According to the Bureau of Justice Statistics, in 2010 the United States housed

approximately 1,612,395 prisoners in both state and federal prisons, the highest rate in the world. Interestingly, the United States is not the most violent country in the world, but it incarcerates the most criminals. This is largely the result of moral panic, mandatory minimum sentencing, three-strike legislation, and the prosecution of victimless crime. However, the focus of incapacitation was not always utilized for societal protection as its main goals. Kifer et al (2003) notes:

During the Jacksonian era, prisons were designed to rehabilitate criminals through the use of solitary confinement, which it was hoped would induce penitence. These prisons never adequately achieved the goal of rehabilitation, however and the primary focus of prison soon turned to incapacitation. During the reformatory era, the primary goal of prisons again became rehabilitation. The goals of imprisonment changed yet again in the late 1960s and early 197s, in response to intense criticism of the rehabilitation model. In its place, retributionists called for a “human incarceration” approach to imprisonment, or incapacitation. Today, incapacitation is the accepted and prevailing response to crime. (p.47-48).

It is important to note that retribution, deterrence, rehabilitation and incapacitation as justifications for punishment are not static terms, but can essentially be quite fluid. Criminal justice policies often reflect numerous justifications, incorporating factors such as deterrence and incapacitation within their applications.

Restorative Justice

While restorative justice is a relatively new technique as a response to crime, it is one of the oldest forms of criminal justice. Braithwaite (1998) offers that it was utilized in ancient Greek, Arab and Roman civilizations, and has deep seeded roots in a variety of religious traditions. Kurki (2000) describes restorative justice as being “based on values that promote repairing harm, healing, and rebuilding relations among victims, the offenders, and the communities” (p. 236). One of the major differences between traditional justifications of punishment (retribution, deterrence, rehabilitation, and incapacitation) and restorative justice is that the state or legal governing body does not always play a central part. Kurki (2000) further suggests:

Core restorative justice ideals imply that government should surrender its monopoly over responses to crime to those who are directly affected—the victim, the offender, and the community. Restorative justice considers crime to be an offense against an individual or community, not the state, and this is where it sharply divides from the current American criminal justice system of penalization. The goal is to restore the victim and the community and to rebuild fractured relationships in process that allows all three parties to participate (p. 236).

Banks (2013) further notes, “Rather than separating out the offender as a subject for rehabilitation, restorative justice sees social support and social control of offenders as the means to rehabilitation” (p. 118). Restorative justice is not a lenient option for offenders, and requires accountability of the offender and restitution to the victim. In the traditional American criminal justice system, reparations paid are not to the victim, but to the *state*, and it is almost always in the form of incarceration of the offender. Restorative justice provides numerous options for restitution, including monetary repayment, community service activity, or participation in treatment plans. In restorative justice practices, the crime committed is primarily viewed by how it has destroyed a relationship between members of a community,

and the desire is to address this broken relationship and attempt to repair it. Punitive justice however, is most concerned with penalizing, or punishing, the offender and this often results in a total separation of the offender from both the victim and community.

Restorative justice practices have been used as a response to a variety of crimes in the United States, primarily in diversion programs for “juveniles in minor, nonviolent, and nonsexual crimes (Kurki, 2000, p. 241),” and are often supported or created by faith based organizations. In fact, the first North American victim-offender mediation program in Ontario was established by the Mennonite Central Committee workers in 1974 and Kurki suggests that “religion and moral theory still provide strong backgrounds for restorative justice” (p. 240). Restorative Justice often takes shape as victim-offender mediation, peace circles, and other community initiatives that provide alternatives to the traditional incarceration model and places the control of penalization back in the hands of those affected by the crime. Since the 1970s, the United States has slowly implemented restitution and community service as part of select sentencing. Furthermore, with the victims’ movement of the 1990s, restorative justice apparatuses often provide a vehicle in which victims’ voices may be heard.

Garland (1990) and others suggest that the ideas and justifications for punishment as described above are not a static, moral understanding, but often a reflection of current cultural values that greatly influenced by social structures. It could be suggested, as evident in the United States with the reemergence of retribution practices, that moral explanations of punishment tend to be cyclical. Justifications for crime tend to evolve, change, and often times blend, largely as a result of the current political climate.

What works for state crime?

The above theories of punishment are often utilized to justify punishment for what are considered traditional crimes. These crimes traditionally include murder, rape, larceny, and theft along with a variety of other types of crimes, both violent and not. These types of crimes are often committed by one, or a few, offenders. State crime, however, is often the result of many simultaneous offenses and offenders, all including a variety of social and individualistic reasons. Rothe (2009) states, “there is variation in accountability and responsibility under international laws for states versus individuals” (p. 157). In addition, state crime often results in a plethora of victims at varying levels. Because of the vast range of offenders usually participating in an instance of state crime, and the general complexity of state crime, it becomes difficult to identify only one theory as appropriate for addressing state crime. Research suggests, and I am inclined to agree, that because that complexity associated with state crime, all theories of punishment and their applications may be useful in understanding state crime.

Chambliss’s 1989 presidential address to the American Society of Criminology is arguably noted as the first time the discussion of state crime was discussed professionally on such a large scale. He suggested that state crimes be defined as “acts defined by law as criminal and committed by state officials in pursuit of their jobs as representatives of the state” (p. 184). The Schwendingers (1970) and Green and Ward (2000) suggested that state crime should not be defined simply by the legality of the act, but that the definition of state crime should include the violation of human rights. According to Kramer and Michalowski (2005) state crime is defined as “any action that violates public international law, international criminal law, or domestic law when these actions are committed by individuals acting in office or cover capacity as agents of the state pursuant to expressed or implied orders of the state, or resulting from state failure to exercise due diligence over the actions of its agents (p. 448).” Rothe (2006) defines state crime as “Any action that violates international public law, and/or a state’s own domestic law when these actions are committed by individuals actors

acting on behalf or in the name of the state, even when such acts are motivated by their personal, economical, political, and ideological interests” (p.6). Most criminologists agree, to some extent, that violation of international law is inclusive to define state crime (Rothe and Friedrichs, 2006). Prominent examples of state crimes include crimes against humanity, genocide (also considered a crime of globalization), terrorism, torture and war crimes.

In the following sections the majority of discussion will be geared towards the state crimes of genocide, crimes against humanity, and war crimes. The majority of discussion will be based on the case study of the applications of restorative justice in Rwanda following the 1994 Rwandan genocide. While a variety of other nations have utilized restorative justice mechanisms following instances of state crime (i.e., Truth Commissions in South Africa and Sierra Leone), Gacaca courts in Rwanda are perhaps historically the largest attempts at restorative justice following state crime.

Noticeably absent are other types of state crime, most particularly state-corporate crimes. Michalowski and Kramer (2005) coined this term to refer to the harmful collaborations of state and corporations and suggest that “when economic and political powers pursue common interests, the potential for harm is magnified” (p.1). The case studies of state-corporate crime most frequently analyzed are those of the 1986 Challenger explosion which looks at the relationship between NASA and Morton Thiokol, the Ford Pinto and the relationship between Ford and the United States Government, and the fire at the Imperial Food Products chicken-processing plant in North Carolina, where the relationship between Imperial, the federal government, and state local officials was examined. The reason that state-corporate crime will not be discussed further is that “punishment” for these crimes has been all but non-existent.

As discussed above, selecting one model of theoretical support for punishment regarding state crime is incredibly complex. Cohen (1995) notes the particular difficulty with this, as often locations of state crimes are going through transitional periods. This transitional period includes attempting to rebuild their state after a mass atrocity has been carried out by governmental officials. The concept of “justice in transition” often encompasses aspects of retribution, incapacitation and restorative justice. Rothe (2006) further notes that punishment in the face of state crime is not simply about accountability but about transitional justice mechanisms which include both accountability practices and restorative aspects.

Following the atrocities and crimes of the Second World War, the Nuremberg trials were conducted from 1946-1948 to prosecute prominent military and political figures responsible for the Holocaust. Following the trials, human rights were introduced into international law via the Nuremberg Charter. The charter provided principles to determine what defined a war crime and was used to codify the legal principles that were established and used during the Nuremberg Trials. These principles clearly lay out “crimes against humanity” to include murder and extermination, and on December 9, 1948 the United Nations adopted the Convention on the Prevention and Punishment of Crimes of Genocide.

Additionally, The United Nations Declaration of Human Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment all clearly state that those committing torture should be prosecuted for their crimes. In addition, there are more than 20 legally binding international treaties that deal with a person’s right to exist (Alveraz, 2010). The International Criminal Court (ICC), enacted in July 2002, is a permanent tribunal to address crimes against humanity including war crimes, crimes of aggression, and genocide. The Rome Statute of the ICC states that the ICC can only investigate and prosecute perpetrators of war crimes in states that are either unwilling or unable to do so themselves. The ICC has authority to “investigate and prosecute these types of crimes on a permanent and ongoing basis (p. 140).”

It is evident that there is a long list of international legal precedent that makes a variety of state crimes illegal. It is suggested that codified legal law could certainly act as a deterrent

and Rothe (2006) states “The UN, the World Court, and the new ICC are uniquely positioned to act as global dispute resolutions agents. While possessing a clear mandate, these organizations have no real authority or ability to use coercive force.” (p. 163). Rothe further notes that “the failure of international law to act as a deterrent is the result of the lack of effectual enforcement mechanisms. After all, states that hold vast economic, military and political power within the international arena have long ignored international law as a frame for their behaviors if it conflicted with their foreign policy interests” (p. 161). It is unknown if international legal institutions would have a deterrent effect, but part of the explanation for this unknown is that they lack enforcement. While legal laws exist to prevent occurrences of state crime, they are simply rarely enforced.

The ICC and the International Criminal Tribunals are often utilized as means of retribution for perpetrators of state crime. From a retributive standpoint, these tribunals deliver punishment and sanctions because the individuals broke international and national laws, and deserve to be punished. The International Criminal Tribunal for the former Yugoslavia (ICTY) was created under Chapter VII of the UN Charter in 1993 as a result of the violations of international humanitarian rights committed in Yugoslavia between 1991 and 1993. The International Criminal Tribunal for Rwanda was created to address genocidal acts committed between January 1994 and December 1994. The ICTY has charged approximately 171 criminals, and the ICTR has indicted 95 individuals which included a total of 30 perpetrators serving prison sentences (Rothe, 2009). The UN Security Council requested the closure of the ICTR by December 2014 and the responsibilities of the tribunal have been transferred to the UN International Residual Mechanism for Criminal Tribunals. The number of those indicted and convicted seems incredibly small compared to the vast number of individuals who were perpetrators of genocidal acts. However, funding for the criminal tribunals as well as lack of staff and resources slows down the process considerably. Additionally, it is typically that only top level offenders and perpetrators are tried at criminal tribunals. The remaining offenders are often dealt with domestically.

Domestically, state crime criminals are often tried at a variety of local courts or truth commissions. While these courts often achieve retributive ends, their roots are often based in themes of restorative justice. From a retributive standpoint, local courts are still charged with the objective of criminal sentencing. Perhaps the best example of a domestic court with a punitive function is the Gacaca courts located in Rwanda. Following the genocide in 1994, the new government was responsible for addressing the 100,000 people accused of genocide and war crimes which overwhelmed the limited judicial capacity. Only 14 public prosecutors and 39 criminal investigators were left and two thirds of the nation’s judges had been killed or fled the country. By the year 2000, over 120,000 genocidaires were in Rwandans prisons and it was more likely they would die before they ever appeared in court (Harrell, 2003).

Because of this, the government implemented Gacaca courts. Organic Law 40/2000 was established in 2000, and established 11,000 Gacaca jurisdictions, which include approximately 250,000 Rwandans who serve on Gacaca in some capacity. Gacaca was responsible for the trying and sentencing of all genocidal crimes with the exception of those responsible for the planning and organization of the genocide, which were referred to the ICTR. As of 2012, approximately 2 million genocides had been tried, with 65% being found guilty. Guilty verdicts resulted in imprisonment and others participated in community service or some other form of reparation.

Truth Commissions are often utilized domestically to address state crimes. The first Truth Commission was enacted in Uganda in 1974 and as of 2002, there have been 19 Truth Commissions across the globe. The purpose of Truth Commissions is to create a report on human rights violations which includes testimony provided by human rights victims. However, some Truth Commissions also have the legislative power to grant amnesty to

offenders and recommend prosecution, as was the case with the South Africa Truth and Reconciliation Committee and the Sierra Leone Truth Commission. (Rothe, 2008).

It is evident that a both domestic and international apparatuses are in place to provide retributive functions following state crime and have had varying levels of success. Additionally, Truth Commissions, domestic courts such as Gacaca, and International Criminal Tribunals all participate in incapacitation. For those who commit the most heinous grievances against humanity and are known to have planned and executed mass killings, it is generally supported that for the safety of society, these perpetrators should be incarcerated. There are few people who believe that Ferdinand Nahimana, Jean Bosco Barayagwiza and General Ante Gotovina should be free. However, these apparatuses often have dual functions. The purpose of both Truth Commissions and the Gacaca courts in Rwanda was not only to appropriate responsibility, but to provide justice and reconciliation. It is here that we note the restorative justice applications of these apparatus.

Traditional criminal justice systems are offender-oriented, meaning that the focus of the criminal justice system is focused largely on punishment of the offender. Restorative justice is victim-orientated, and provides much broader terms and more complex analyses in establishing who the "victim" is. In many instances of state crime, it becomes difficult to determine who exactly is a victim and who is the offender, which makes selecting one form of traditional punishment difficult. State crimes such as genocide are often the result of mass hysteria, propaganda, and moral panic which often causes irrational acts of violence. Looking at offenders within the general population who may have fallen prey to mass hysteria propaganda and moral panic in the same lens with which organizers of state crime are viewed is often problematic. Furthermore, in instances of state crime, it becomes difficult to pigeon hole individuals to one category, either "victim" or "offender." Often times multiple roles are occupied (Sullivan and Tifft, 2005).

Restorative justice practices are focused on not only addressing the harm caused by and endured by victims and offenders, but it focuses on the harm inflicted upon the community as well. Through the restorative justice process, the needs of all three components are addressed, by actively taking steps to repair the harm that resulted by involving all parties that are involved, and involving the community in restorative process.

Gacaca courts in Rwanda were charged not only with the punitive end of justice, but the primary role of Gacaca was to foster forgiveness and reconciliation among remaining Rwandans. In fact, Gacaca courts have been considered the largest attempts at implementing restorative justice that the world has seen. Following the slaughter of approximately 1 million people in 90 days, traditional incarceration was simply not an option. Imprisoning over 100,000 perpetrators of state crime in a country that just lost a large portion of its population was not feasible for economical as well as social reasons (i.e. loss of labor). It has been noted that restorative justice was most applicable in Rwanda because there was no other option. Perhaps that is true. However, victims were able to take an active role in the legal process and offenders were encouraged to take responsibility for their actions and make reparations. This partially puts justice in the hands of victims. Gacaca courts allowed those already in prison to be released to participate in Gacaca. If Gacaca determined their guilt and the offender provide information about his or her crime as well as experienced remorse, their prison sentence was often suspended and the duration of their time was to be spent in their communities provided community service. This example illustrates how restorative justice measures address the needs of victims, offenders and the community and focuses on repairing the harm to all three apparatuses.

Because restorative justice measures often encompass (to varying degrees) a variety of punishment responses, it is often an appropriate avenue in which to address the punishments of very complex state crimes. Restorative justice opens itself to rehabilitation of the offender, yet also allows for retribution and incapacitation, as is needed for those who organize and

perpetrate the most heinous of crimes. Uniquely, it allows victims voices to be heard, and for them to take an active role in the criminal justice process. Restorative justice apparatuses focus on justice, reconciliation, and reparation for the community, victim and offender. This dual triangular relationship essentially does not exist in other punishment models and often times makes restorative justice a logistical choice. However, the logistical end should not over shadow the potential therapeutic nature of this approach.

The punishment response to state crime is notoriously difficult due to the complexity of the crime and those involved. However, as mass atrocities and crimes against humanity continue, an appropriate response to this type of crime is needed. Truth and Reconciliation Committees, International Criminal Tribunals, and Gacaca courts in Rwanda provide examples of how restorative justice apparatuses operate and potentially address the needs of those who survive instances of state crime. Further research of these types of apparatuses is needed to further understand the appropriate punishment response.

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